United Nations CRC/C/OPAC/IND/CO/1

Convention on the Rights of the Child

Distr.: General
7 July 2014

Original: English

Committee on the Rights of the Child

Concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

1. The Committee considered the initial report of India (CRC/C/OPAC/IND/1) at its 1885th and 1886th meetings (see CRC/C/SR.1885 and 1886), held on 2 and 3 June 2014, and adopted at its 1901st meeting, held on 13 June 2014, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPAC/IND/Q/1/Add.1) and appreciates the constructive dialogue held with the State party's multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's combined third and fourth periodic reports under the Convention on the Rights of the Child (CRC/C/IND/CO/3-4) and those on the State party's initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/IND/CO/1), adopted on 13 June 2014.

II. General observations

Positive aspects

4. The Committee welcomes the ratification by the State party, in May 2011, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

* Adopted by the Committee at its sixty-sixth session (26 May–13 June 2014).

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5. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular the adoption of The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, and The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013.

III. General measures of implementation

Legislation

6. The Committee is concerned about the lack of information on the legal status of the Optional Protocol in the jurisdiction of the State party.

7. **The Committee recommends that the State party take all necessary legal measures to incorporate the provisions of the Optional Protocol into its domestic laws.**

Declaration

8. The Committee notes that according to the declaration the State party made upon ratification of the Optional Protocol, "the minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrollment and requisite training period, the attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age."

9. **The Committee urges the State party to consider withdrawing its declaration and establish the minimum age for recruitment into the armed forces at 18 years.**

Coordination

10. While noting that the Ministry of Women and Child Development, in cooperation with the Ministry of Home Affairs and the Ministry of Defence, is responsible for the coordination of the implementation of the Optional Protocol and the establishment of a National Coordination Group to coordinate the implementation of the Optional Protocol with other concerned ministries, departments, State governments and non-governmental organizations, the Committee is concerned about the infrequent holding of meetings.

11. **The Committee recommends that the State party strengthen coordination among the Ministry of Women and Child Development and other relevant entities in order to ensure full implementation of the Protocol.**

Allocation of resources

12. The Committee is concerned about the very low budget allocations foreseen for child protection, as recognized by the State party in its report, and that there are no budget allocations specifically earmarked for activities to implement the Optional Protocol.

13. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of all areas of the Optional Protocol at national, regional and district levels.**

Dissemination and awareness-raising

14. The Committee welcomes the dissemination of the Optional Protocol to various agencies, including the relevant central government ministries, state governments and union territory administrations. The Committee is nevertheless concerned that awareness of the Optional Protocol among the general public is low and that efforts to disseminate its relevant provisions among the public, children and professional groups working with and

for children as well as local authorities have been insufficient, in particular in the disturbed districts.

15. **In the light of article 6, paragraph 2 of the Optional Protocol, the Committee recommends that the State party ensure that the principles and provisions of the Optional Protocol are widely disseminated among the general public, children, teachers, and relevant central and local authorities, in particular in the disturbed districts.**

Training

16. The Committee is concerned that relevant professional categories, in particular the military, the police and personnel in the administration of justice, do not receive adequate training on the provisions of the Optional Protocol.

17. **The Committee recommends that the State party strengthen its human rights training to all relevant professional groups, in particular the armed forces, including the Central Paramilitary Forces, members of international peacekeeping forces, the Central Armed Police Forces, the State Police Forces, including the Special Police Officers and the Village Defence Committees, judges, social workers, teachers, media professionals and legislators, and provide specific training on the provisions of the Optional Protocol.**

Data

18. The Committee notes with concern the lack of data and statistics on most areas covered by the Optional Protocol.

19. **The Committee recommends that the State party:**

(a) Develop and implement a comprehensive system of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol;

(b) Ensure that the data are disaggregated, inter alia, by sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous, socioeconomic status, with particular attention to the most vulnerable groups of children;

(c) Analyse and use the data collected as a basis for designing policies to implement the Optional Protocol and assessing progress achieved towards that objective;

(d) Seek assistance from the relevant United Nations agencies and programmes, including the United Nations Children's Fund (UNICEF), in that regard.

IV. Prevention

Age verification procedures

20. The Committee is concerned at the lack of effective mechanisms to verify the age of incoming recruits to the armed forces, police forces and other paramilitary forces, and notes that this problem is exacerbated by the low rate of birth registration in the State party. In particular, the Committee is concerned that in the absence of an official birth certificate, admission to the armed forces, police forces and other paramilitary forces can be based on a school certificate with an estimated date of birth.

21. **The Committee urges the State party to ensure consistent and effective verification of the age of individual recruits to effectively prevent the recruitment of children into the armed forces. Furthermore, the State party should take all necessary measures to ensure that all children are registered at birth.**

Prevention of recruitment of children by non-State armed groups

22. The Committee is deeply concerned at the phenomena of children under 18 years of age being recruited by various non-State armed groups and their use in hostilities in the disturbed districts in the north-eastern states, in areas where Maoist armed groups are operating and in Jammu and Kashmir. The Committee is further concerned at the practice of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts.

23. **The Committee urges the State party to expeditiously enact legislation that prohibits and criminalizes the recruitment and use of children under the age of 18 years in hostilities by non-State armed groups. The Committee further urges the State party to take all necessary measures to prevent and eliminate the root causes of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts. Those measures should include implementing awareness-raising programmes addressing the root causes of forced recruitment, enabling schooling for such children, and establishing a monitoring and reporting system for parents and families to report any forcible recruitment of children.**

Military schools

24. The Committee is concerned that children as young as 13 years of age are enrolled in military colleges and schools and that they participate in basic military training involving firearms. The Committee is also concerned that no concrete information on their military status in case of mobilization or clashes with armed opposition groups or other emergency situations, minimum service time and conditions for early discharge has been provided. It is further concerned that there are no independent and confidential reporting mechanisms in such colleges and schools.

25. **The Committee recommends that the State party:**

(a) Take measures to ban military-type training, including on the use of firearms, for all children under the age of 18 at military schools. Those recruited to a military establishment should have a birth certificate or other document enabling age verification;

(b) Establish regular monitoring of military schools to ensure that the school curriculum and the teaching personnel comply with the Optional Protocol;

(c) Ensure that children who study in military schools are considered as civilians until they turn 18;

(d) Ensure that children under the age of 18 who are admitted to cadet schools and higher military institutes are not subjected to military discipline;

(e) Set up independent, confidential and gender-sensitive mechanisms for complaints and investigation that are accessible to children in military colleges and schools, in order to monitor the welfare of and investigate complaints by children in such programmes.

Human rights and peace education

26. While welcoming that the Central Board of Secondary Education has taken steps to introduce a human rights course for military schools, the Committee regrets the lack of programmes systematically incorporating human rights and peace education into school curricula.

27. **With reference to its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party take effective measures to include peace education in school curricula and encourage a culture of peace and tolerance within schools. It also encourages the State party to include human rights and peace education in the training of teachers.**

Attacks on and/or occupation of protected civilian places

28. While welcoming the adoption of an Integrated Action Plan that provides public infrastructure and services in areas where Maoist armed groups are operating, the Committee is concerned at the deliberate attacks on schools by non-State armed groups, as well as the occupation of schools by State armed forces in north-eastern India and in areas where Maoist armed groups are operating.

29. **The Committee urges the State party to take all necessary measures to prevent the occupation and use of as well as attacks on places with a significant presence of children, such as schools, in line with international humanitarian law. It also urges the State party to ensure that schools are vacated expeditiously, as appropriate, and to take concrete measures to ensure that cases of unlawful attacks on and/or occupation of schools are promptly investigated and that perpetrators are prosecuted and punished.**

V. Prohibition and related matters

Recruitment and use of children by State police forces

30. The Committee is concerned about the lack of uniformity regarding the minimum age for recruitment in police forces in different states and in the union territories of the State party and that some states/territories are recruiting children under 18 years as "boy orderlies" in the state police, auxiliary police forces and village defence committees.

31. **The Committee urges the State party to enact legislation that prohibits and criminalizes recruitment of children under 18 years of age in the police or related forces as well as in village defence committees in all states and union territories of the State party.**

Recruitment and use of children by non-State armed groups

32. The Committee expresses deep concern about the ongoing recruitment, kidnapping and use of children, including girls, by various non-State armed groups listed in the Unlawful Activities (Prevention) Act, 1967, or active in the disturbed districts in north-eastern India, as well as areas where Maoist armed groups are operating and districts in Jammu and Kashmir. The Committee expresses further concern that children are used for various tasks, including handling weapons and improvised explosive devices, and acting as informants.

33. **The Committee reminds the State party of its obligations under the Optional Protocol to take all necessary measures to ensure that children are not recruited by non-State armed groups. It recommends that forcible recruitment of children be**

defined as an offence in the Penal Code. The Committee further recommends that the State party set up a monitoring system which allows family members to confidentially report missing children and ensure prompt and impartial investigations into such reports. The State party should consider seeking technical assistance from, inter alia, the United Nations Children's Fund (UNICEF).

Extraterritorial jurisdiction

34. The Committee regrets that the State party did not provide information in its report about the possibility of establishing extraterritorial jurisdiction over all offences covered by the Optional Protocol.

35. **The Committee recommends that the State party take all necessary steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all offences covered by the Optional Protocol, when such offences are committed by or against a person who is a citizen of, or has habitual residence in, the State party. The Committee also recommends that the State party consider ratification of the Rome Statute of the International Criminal Court.**

VI. Protection, recovery and reintegration

36. The Committee welcomes the adoption of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2000, and its subsequent amendment in 2006, that provides protection to children affected by armed conflict in the disturbed districts of the State party. The Committee is nevertheless concerned that the Act is not sufficiently implemented in all disturbed districts in the State party and that Child Welfare Committees and Juvenile Justice Boards provided for in the Act have not been established in those districts.

37. **The Committee urges the State party to prioritize the establishment of mechanisms for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act in all disturbed districts in the State party and closely monitor its implementation.**

Measures adopted to protect the rights of child victims

38. The Committee is concerned that children under the age of 18 are subject to administrative detention under the Public Safety Act, 1978; the Armed Forces Special Powers Act, 1958; and other security-related legislation in the disturbed districts. The Committee is particularly concerned that, under these security-related laws, children are treated as, and detained with, adults.

39. **The Committee calls upon the State party to review its security-related laws with a view to prohibiting criminal and administrative proceedings against children under the age of 18 as well as prohibiting their detention in military detention centres. It recommends that all children under the age of 18 be handled by the juvenile justice system in all circumstances and that age verification procedures are consistently and effectively applied in that context. In particular, the Committee urges the State party to ensure that:**

(a) Children are not arbitrarily arrested, detained and prosecuted by military courts for their membership in armed groups or for military offences such as desertion;

(b) Detention of children is only used as a measure of last resort and for the shortest possible period of time;

(c) Children deprived of their liberty as a consequence of their involvement in hostilities are treated with humanity and with respect for their inherent dignity;

(d) If criminal charges are brought against children, trials must be held before civilian courts and in compliance with international standards on juvenile justice, including the standards enshrined in the Convention on the Rights of the Child and illustrated in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice;

(e) Children are provided with rehabilitation and reintegration services, including reunification with their families and access to psychosocial recovery.

Disarmament, demobilization and reintegration

40. The Committee notes with appreciation that the State party has established surrender-cum-rehabilitation schemes in north-east India, in areas where Maoist armed groups are operating and in the disturbed districts in Jammu and Kashmir, which provide for monetary compensation for those who surrender, as well as vocational training programmes and incentives for the surrender of weapons. However, the Committee is concerned that none of the policies relating to surrender focuses on the recovery and integration of children. In particular, the Committee is concerned that:

(a) Mechanisms for the systematic identification of former child soldiers among those who surrender to the State security forces are not in place;

(b) The surrender and rehabilitation policies require a surrendered person to make a public media statement of his or her voluntary surrender;

(c) Surrendered cadres, including children, are used as informants for security forces, which exposes them to security risks, including subsequent retaliation by non-State armed groups.

41. **The Committee urges the State party to develop a programme aimed at the identification, release, recovery and reintegration with their families of all children, including girls, who have been recruited or used in hostilities by non-State armed groups, and immediately ensure their effective and transparent demobilization. In that regard, if families cannot be located or identified, alternative protective accommodation should be provided. In particular, the Committee recommends that the State party:**

(a) Establish an identification mechanism for children who have, or may have, been involved in armed conflict and ensure that the personnel responsible for such identification are trained in child rights, child protection and child-friendly interviewing skills;

(b) Review its surrender-cum-rehabilitation schemes with a view to protecting surrendered children and other young persons who were minors at the time that they joined or were forcibly recruited by the armed opposition groups from media exposure and, in particular, from identity disclosure, as envisaged under the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006;

(c) Ensure that children are not used as informants and that any information provided by demobilized children is maintained confidential so as not to expose said children to security risks or potential retaliations;

(d) Conduct prompt and impartial investigations into reports that children have been interrogated for intelligence purposes and ensure that those responsible in the armed forces are duly sanctioned and that the said children are accorded victim and witness support services;

(e) Provide further information on measures adopted in that regard in its next report under the Convention on the Rights of the Child.

Assistance for physical and psychological recovery and social reintegration

42. The Committee regrets that the State party did not provide information on measures relating to recovery, psychosocial support, reintegration with families or placement in protective accommodation for children who may have been recruited or used in armed conflicts. In particular the Committee regrets the lack of information on:

(a) The type of assistance provided for social reintegration and family reunification and the type of physical and psychological recovery provided, including the budget provisions;

(b) The number of children that have benefited from such assistance;

(c) The remedies and reparations that may be sought by and provided to child victims of recruitment.

43. **The Committee urges the State party to:**

(a) Provide information on the number of children identified and the number of children reintegrated with their families, and for those who could not be reunited with their families, specify what action was taken to provide them with protective accommodation;

(b) Provide those children with immediate, child- and gender-sensitive multidisciplinary assistance for their physical and psychological recovery, and ensure that the release, recovery and social reintegration of children associated with non-State armed forces or armed groups is prioritized;

(c) Establish a community follow-up system to ensure that the children are able to access schooling and health care services, as necessary, and that they are not stigmatized.

Arms export

44. The Committee is concerned at the lack of information on legislation explicitly prohibiting and criminalizing trade in and export of arms, including small arms and light weapons, to countries where children are known to be, or have been, involved in armed conflict. The Committee is further concerned that the State party has not ratified the 2008 Convention on Cluster Munitions.

45. **The Committee recommends that the State party:**

(a) Enact legislation explicitly prohibiting trade in and export of arms, including small arms and light weapons, to countries where children are known to be, or have been, involved in armed conflict;

(b) Ensure that illicit activities, including the manufacturing and trafficking of small arms and light weapons, are criminalized, records are maintained and firearms are marked;

(c) Consider ratifying the 2008 Convention on Cluster Munitions.

VII. International assistance and cooperation

International cooperation

46. **The Committee recommends that the State party continue and strengthen its cooperation with the International Committee of the Red Cross and the Special Representative of the Secretary-General for Children and Armed Conflict, and explore ways to increase cooperation with UNICEF and other United Nations entities for the implementation of the Optional Protocol.**

VIII. Follow-up and dissemination

47. **The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the recommendations in the present concluding observations by, inter alia, transmitting them to Parliament, the relevant ministries, including the Ministry of Defence, the Supreme Court and local authorities, for appropriate consideration and further action.**

48. **The Committee recommends that the initial report and written replies submitted by the State party and the present concluding observations be made widely available, including, but not exclusively, through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol, its implementation and monitoring.**

IX. Next report

49. **In accordance with article 8, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Protocol and the recommendations in the present concluding observations in its next periodic report to be submitted to the Committee, in accordance with article 44 of the Convention on the Rights of the Child.**